

1 ROGER L. GRANDGENETT II, ESQ., Bar # 6323
2 TIMOTHY W. ROEHRS, ESQ., Bar # 9668
3 LITTLER MENDELSON, P.C.
3960 Howard Hughes Parkway
Suite 300
Las Vegas, NV 89169-5937
4 Telephone: 702.862.8800
Fax No.: 702.862.8811
5 Email: rgrandgenett@littler.com
Email: troehrs@littler.com

6 Attorneys for Defendant
7 DOUBLE P CORPORATION OF ILLINOIS, D/B/A AUNTIE
8 ANNE'S PRETZELS

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA
11

12 BRENDA OJEDA, an individual,
13 Plaintiff,

14 vs.

15 DOUBLE P CORPORATION OF
16 ILLINOIS, a Foreign Corporation, d/b/a
Auntie Anne's Pretzels; DOES 1 through
17 25, inclusive; and ROE CORPORATIONS
1 through 25, inclusive,
18 Defendant.

Case No. 2:17-cv-02544-GMN-PAL

**STIPULATION AND ORDER TO
STAY DISCOVERY**

19 Plaintiff BRENDA OJEDA ("Plaintiff") and Defendant DOUBLE P CORPORATION OF
20 ILLINOIS, D/B/A AUNTIE ANNE'S PRETZELS ("Defendant") (collectively referred to as the
21 "parties"), by and through their undersigned counsel, hereby stipulate and request that to the Court
22 issue an order staying discovery until the Court has ruled on Defendant's Motion to Dismiss, which
23 is fully briefed and pending before the Court. Docket No(s). 9, 11-12.

24 In support of this stipulation and request, the parties state as follows:

25 **I. BACKGROUND.**

26 Plaintiff's Complaint, which was filed on September 29, 2017, brought claims for
27 pregnancy discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et*
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1 *seq.* and Nevada state law, NRS 613.310 *et seq.*; retaliation under Title VII; negligent hiring,
2 supervision and/or training; and intentional infliction of emotional distress. Docket No. 1. On
3 November 6, 2017, Defendant filed a Motion to Dismiss Plaintiff's Complaint in its entirety
4 arguing that Plaintiff failed to plead plausible causes of action in her Complaint and that several of
5 Plaintiff's causes of action are subject to dismissal on the basis of either preemption or the failure to
6 exhaust her administrative remedies. Docket No. 9. Plaintiff opposed Defendant's Motion to
7 Dismiss on November 20, 2017. Docket No. 11. That Motion has been fully briefed before the
8 Court since Defendant filed its Reply brief on November 27, 2017.

9 As a case raising a claim under Title VII of the Civil Rights Act of 1964 this case
10 constitutes an "employment-discrimination" action, which must be assigned to the Court's Early
11 Neutral Evaluation ("ENE") Program pursuant to the Local Rules of this Court. LR 16-6(a). The
12 Court has not yet assigned this case to the Court's Early Neutral Evaluation Program. The parties
13 request that this stipulation also serve as notice pursuant to LR 16-6(b) that this case should be
14 assigned to the Early Neutral Evaluation Program.

15 The parties held their Fed. R. Civ. P. 26(f) Conference on December 6, 2017, which
16 presently renders the parties' Stipulated Discovery Plan and Scheduling Order due to be filed on
17 December 20, 2017, pursuant to LR 26-1(a). Also, during the 26(f) Conference, the parties'
18 stipulated that their Fed. R. Civ. P. 26(a)(1) Initial Disclosures would be exchanged by January 10,
19 2018 or seven (7) days before the date the Court sets for the ENE Session in the case, whichever is
20 earlier.

21 The parties agree that they will provide Fed. R. Civ. P. 26(a)(1) disclosures by the above-
22 stated deadline. But the parties request that the Court otherwise issue a stay of discovery and
23 continue the deadline for the parties' Stipulated Discovery Plan and Scheduling Order pending the
24 disposition of Defendant's Motion to Dismiss. The parties agree that if the Court issues this stay of
25 discovery, they will submit a Stipulated Discovery Plan and Scheduling Order within 14 days of the
26 Court's order on that Motion if the Court does not order that Plaintiff's Complaint dismissed in its
27 entirety, with prejudice. The parties also request that the Court proceed with assigning the case to
28 the Court's Early Neutral Evaluation Program, notwithstanding their request for a stay of

1 discovery.

2 **II. A STAY OF DISCOVERY IS WARRANTED.**

3 Courts have broad discretionary power to control discovery including the decision to allow
4 or deny discovery. *See e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). In
5 evaluating the propriety of an order staying or limiting discovery while a dispositive motion is
6 pending, the court considers the goal of Federal Rule of Civil Procedure 1, which provides that the
7 Rules should “be construed, administered, and employed by the court and the parties to secure the
8 just, speedy, and inexpensive determination of every action.” *Kor Media Grp., LLC v. Green*, 294
9 F.R.D. 579, 581 (D. Nev. 2013); *see also Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 602 (D.
10 Nev. 2011) (“Discovery is expensive.”).

11 In assessing a request to stay discovery, the court takes a “preliminary peek” at the merits
12 of the dispositive motion. *Tradebay, LLC, v. Ebay, Inc.*, 278 F.R.D. at 603. This “preliminary
13 peek” does not prejudice the outcome of the motion; it merely evaluates whether an order staying
14 discovery is warranted, given the objectives of Rule 1. *Id.* The court employs a two part test in
15 determining whether to stay the discovery when a dispositive motion is pending: (1) the pending
16 motion must be potentially dispositive of the entire case or at least dispositive of the issue on
17 which discovery is sought; and (2) the court must determine whether the pending potentially
18 dispositive motion can be decided without additional discovery. *See Ministerio Roca Solida v.*
19 *U.S. Dep’t of Fish & Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013).

20 Here, Defendant’s Motion to Dismiss is potentially dispositive of the entire case as it
21 requests dismissal with prejudice of each of Plaintiff’s causes of action. In its Motion to Dismiss
22 and Reply supporting that motion, Defendant contends that Plaintiff failed to plead and cannot
23 plead sufficient facts to state a plausible claims for each of the causes of action in Plaintiff’s
24 Complaint, that several of Plaintiff’s causes of action should be dismissed on the basis that they are
25 preempted or because Plaintiff failed to exhaust administrative remedies, and that Plaintiff should
26 not be granted leave to amend her Complaint. Docket No(s) 9, 12. Additionally, the parties agree
27 that additional discovery is not necessary for the Court to rule on Defendant’s Motion to Dismiss.
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1 Plaintiff disputes the legal arguments made in Defendant's Motion to Dismiss and has filed an
2 Opposition. Docket No. 11. However, the parties agree that Defendant's Motion is the type
3 warranting a stay of discovery.

4 The parties agree that this requested stay of discovery will further the goals of judicial
5 economy and the potential more inexpensive determination of this case. The parties look forward
6 to the case's assignment to the Court's Early Neutral Evaluation Program and would like to devote
7 their resources and efforts towards preparation for that ENE Session rather than on discovery – and
8 any potential discovery disputes that may develop - that may ultimately be rendered unnecessary, if
9 the parties are able to reach a resolution at the ENE or if Defendant's Motion to Dismiss is granted
10 with prejudice.

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1 Accordingly, the parties respectfully request that the Court stay discovery until an order has
2 been issued on Defendant's Motion to Dismiss. The parties further request that the deadline for the
3 party's Stipulated Discovery Plan and Scheduling Order be continued until 14 days after the
4 Court's order on this Motion, if that order does not result in Plaintiff's Complaint being dismissed
5 in its entirety, with prejudice.

6 Dated: December 13, 2017

Dated: December 13, 2017

7 Respectfully submitted,

Respectfully submitted,

8
9 /s/ Kyle R. Tatum

/s/ Timothy W. Roehrs

10 PATRICK W. KANG, ESQ.
KYLE R. TATUM, ESQ.
KANG & ASSOCIATES, PLLC

ROGER L. GRANDGENETT II, ESQ.
TIMOTHY W. ROEHRS, ESQ.
LITTLER MENDELSON, P.C.

11 Attorney for Plaintiff
12 BRENDA OJEDA

Attorneys for Defendant
DOUBLE P CORPORATION OF ILLINOIS,
D/B/A AUNTIE ANNE'S PRETZELS

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15 **ORDER**

16 **IT IS SO ORDERED.**

17 Dated: February 2, 2018.

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21 UNITED STATES MAGISTRATE JUDGE

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